have been placed on the other side of the line. In addition to being constitutional the Franchise Tax Law seems desirable politically, a quality rather rare in statutes against which the protection of the "home rule" principle has been invoked. See *The Ripper Cases*, 15 HARV. L. REV. 468. Previous to its enactment franchises in New York to the value of $200,000,000 had escaped taxation owing to the inexperience of the local assessors.

MASTER'S DUTY TO KEEP SAFE THE SERVANT'S WORKING PLACE. — It is well settled that a master is under a non-delegable duty to provide a safe working place for his employees. It is also well settled that he must by proper inspection and repair provide that the place shall not later become unsafe through natural causes. It is not so well settled that there is a similar duty where the subsequent unsafety is due to the acts of the servants themselves in the progress of their work. It is submitted, however, that this third case should be assimilated to the others, and a recent New York decision is authority for that view. Employees engaged under a foreman in excavating, undermined a mass of lime, rendering it unsafe. The plaintiff's decedent sent to work under it was killed. As it appeared that by a reasonably frequent inspection the master could have discovered the danger, he was held liable. *Simone* v. *Kirk*, 173 N. Y. 7.

In the first two classes mentioned above, if a master delegates to a servant the performance of his personal duty to provide and maintain a safe place for work, as has been seen, he is liable to his other employees for the servant's negligence in performing it. This liability does not arise from the doctrine of *respondeat superior*, for, if it did, the fellow servant rule would be a defense. It is rather a part of that public policy which gives rise to the personal duties themselves, — the necessity of protecting human life. It is clear that masters would avoid their personal responsibility, if, by delegating it, they could do so. The rule therefore results that there are certain duties securing safety with regard to the negligent performance of which by his servant a master cannot assert that his other employees have assumed the risk. The reason for the existence of this rule would demand its extension to the third class. The humane policy of protection would come to nothing, if the master, after originally providing a safe place, were allowed to permit the progress of the work to surround the servants with unnecessary dangers.

If the dangers are necessary, however, of course the master is not expected to remove them. This distinguishes the important cases where the master having discovered the danger, a servant is sent to remove it, and is injured. He is held to assume the risk. *Perry* v. *Rogers*, 157 N. Y. 251; *Murphy* v. *Boston & Albany*, 88 N. Y. 146. But though the master must remove unnecessary dangers, practical considerations, and many decided cases, show that he cannot be held to remove them at every moment of the work. See *Cullen* v. *Norton*, 126 N. Y. 1, 6. The idea therefore suggests itself that he should remove them from time to time. A non-delegable duty must be imposed on him to inspect and repair at certain fixed intervals. Such a conception explains most of the cases. Thus in all of the cases not already distinguished which were relied upon to negative the principal case, a sufficient interval had not elapsed since the place became dangerous. It is believed possible to suggest the following rule as consonant with the cases: the master is liable on the basis of his non-delegable duty to provide

a safe working place only in those cases where a definite interval, within which inspection should have been made, has elapsed from the time of the creation of the danger to the time of the injury, the length of this interval to be determined by what is reasonable from the nature of the work. For example, as a usual thing workmen using scaffolding cannot recover against the master for injury due to faulty construction. *O'Connor* v. *Neal*, 153 Mass. 281. But there comes a time beyond which a master must inspect and himself assume the responsibility for such construction. *Benzing* v. *Steinway*, 101 N. Y. 547; see also *Gulf, etc., R. R. Co.* v. *Redeker*, 67 Tex. 181, and *Lovegrove* v. *London R. R.*, 16 C. B. N. S. 668. These cases, like others, are indeed often explained by well known rules applicable only to the special subject matter. But these rules, even when helpful, are clumsy in justice, and rather rules of thumb than principles of law. The test suggested, however, has an application to the whole subject, and offers an explanation for many otherwise incomprehensible cases. *Cf. Mather* v. *Rillston*, 156 U. S. 391; and *New England R. R.* v. *Conroy*, 175 U. S. 323. The principal case is an illustration of its application.

RECENT CASES.

AGENCY — AGENT'S RIGHT TO INDEMNITY — PRINCIPAL NOT AT FAULT. — The plaintiff, a Paris auctioneer, at the request of the defendant in England advertised the latter's mare "Pentecost" for sale. A third person claiming to own the true mare "Pentecost" recovered damages in France from the plaintiff for so advertising. In the present action, brought to secure indemnity for expenses incurred as a result of the French action, it appeared that the defendant's mare was the true "Pentecost." *Held*, that the defendant company is not liable, since it was not at fault. *Halbronn* v. *International Horse Agency, etc.*, [1903] 1 K. B. 270.

The court cites no authority for its position, and none has been found. It seems to have been heretofore considered established that a principal must indemnify his agent for all expenses incurred because of the agency. *Frixione* v. *Tagliaferro*, 10 Moo. P. C. 175; *McArthur* v. *Campbell*, 2 Ad. & E. 57. This is true even though the agency may have terminated at the time the expense was incurred, and even though the expense was unjustly forced upon the agent by the act of a third party. *D'Arcy* v. *Lyle*, 5 Binn. 441. This liability does not seem to depend on any wrongful act of the principal, but is rather an incident to the mere relation of principal and agent. *Stocking* v. *Sage*, 1 Conn. 518. For these reasons the doctrine of the principal case seems difficult to support.

AGENCY — ATTORNEY AND CLIENT — CONTRACT FOR EXCESSIVE FEE. — *Held*, that an attorney's contract with his client for a fifty per cent contingent fee is not necessarily unenforceable on the ground of being unconscionable. *Matter of Mary Fitzsimons*, 174 N. Y. 15.

By the terms of an agreement between an attorney and his client, who was the plaintiff in an action for personal injuries, the attorney was to have fifty per cent of any amount recovered, and the client was to bear all expenses. *Held*, that this agreement is unconscionable, and therefore not enforceable. *Herman* v. *St. Ry. Co.*, 48 Oh. L. Bul. 238 (U. S. Circ. Ct., Second Circ.).

The cases were decided independently of any doctrine of champerty. An agreement which an attorney has secured from his client by taking improper advantage of his fiduciary relation will not be enforced. *Gardener* v. *Ennor*, 35 Beav. 549. But it would seem that a contract which establishes the relation should be governed by different principles. *Dockery* v. *McLellan*, 93 Wis. 381; see *Stout* v. *Smith*, 98 N. Y. 25. Since an attorney is entirely free to refuse a retainer, it is difficult, where no question of champerty is involved, to discover any principle by which his right to impose conditions on acceptance should be abridged. *Dockery* v. *McLellan*, *supra*. No decision supporting